U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE KIRKMAN and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

Docket No. 00-656; Submitted on the Record;
Issued February 16, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's claim for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.[1] As appellant filed her appeal on October 29, 1999, the only decision properly before the Board is the September 29, 1999 decision denying appellant's request for reconsideration of her claim.

On January 13, 1996 appellant, then a 42-year-old letter sorter machine clerk, filed an occupational claim alleging that she sustained stress and chronic pain in her right hand, wrist, arm, neck, elbow and shoulder due to the constant harassment of her supervisor, Yvonne Robinson. Appellant stated that she felt stress from Ms. Robinson, working in chronic pain and under stress with screaming and yelling and not honoring her medical conditions. She alleged Supervisor Byron Bernard King yelled at her and tried to force her to talk with him.

By decision dated July 23, 1996, the Office denied appellant's claim, stating that the fact of injury had not been established. In the accompanying memorandum, the Office considered appellant's allegation that on January 13, 1996 Ms. Robinson saw her standing by the time clock at 3:15 a.m., and when appellant told her she was out to lunch, she told appellant lunch was at 2:30 a.m. An altercation allegedly ensued and appellant yelled at Ms. Robinson. Appellant went to the hospital emergency room and was off duty from January 3 to 22, 1996. The Office noted that, as a result of the January 13, 1996 incident, appellant was given a letter of warning for failure to follow instructions, conduct unbecoming a postal employee and disruption of the workroom floor. The Office also noted that appellant listed 17 other work incidents which caused stress, including Ms. Robinson's yelling and swearing at her, denying her prompt medical

[1] *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

care, delaying filing her form for compensation, giving her dirty mail, putting extra mail on her ledge, denying her union representation, treating her differently than other employees, her and another supervisor's denying her annual leave. Ms. Robinson denied using profanity towards appellant and stated that appellant was talking, eating and writing letters rather than doing her work and was not asked to work out of her restrictions. She stated that appellant was given the mail as it came in, and that as a supervisor, she put mail on ledges for other employees. Ms. Robinson also stated that appellant would ask all three supervisors for slips for the nurse at the same time which caused confusion and delays. The Office found that appellant did not establish that she had been harassed or forced to work beyond her restrictions and denied the claim.

Appellant requested an oral hearing before an Office hearing representative which was held on February 25, 1998. By decision dated April 30, 1998, the Office hearing representative found that appellant established two compensable factors of employment, that Ms. Robinson yelled at her and denied her a chair. The hearing representative found that the opinion of Dr. Sherrie C. Godbolt, a psychiatrist, supported that appellant's emotional condition arose from the compensable factors of employment but the medical opinion was not sufficient to establish the requisite causal relationship. The Office hearing representative vacated the Office's July 23, 1996 decision, and remanded the case for the Office to refer appellant with a statement of accepted facts to an appropriate medical specialist for an evaluation as to whether her emotional condition resulted from the compensable factors of employment.

In an August 13, 1998 report, Dr. Robert T. Segraves, a Board-certified psychiatrist and neurologist, found no disabling psychiatric condition. In a subsequent report dated August 13, 1998, Dr. Segraves stated that appellant "apparently suffered an adjustment disorder, which was related to interpersonal tension at work as exemplified by Ms. Robinson's yelling at her and not providing a suitable chair." He stated that neither incident alone would be sufficient to cause a psychiatric condition as they are commonplace experiences which cause irritation but not a psychiatric impairment. Dr. Segraves stated that appellant had an adjustment disorder on July 27, 1998 when he saw her but he assumed that the adjustment disorder would have ceased six months after the stress was discontinued and certainly before the end of 1997.

By decision dated September 10, 1998, the Office denied appellant's claim, stating that a disability caused by occupational factors had not been established. In the accompanying memorandum, the Office found that the weight of medical evidence, as represented by Dr. Segraves' opinion, did not establish that appellant's emotional condition arose from the factors of her federal employment.

By letter dated September 8, 1999, appellant requested reconsideration of the Office's decision and submitted a report from Julie Levine, a licensed social worker, dated January 1996 stating that appellant attended counseling for three years and was continuing to have symptoms of stress from work. Appellant also submitted a disability note dated January 13, 1996, a temporary limited-duty job offer dated January 13, 1996, a prearbitration settlement dated April 21, 1998, an award dated March 12, 1998 reducing her seven-day suspension to a letter of warning and a memorandum she wrote dated September 8, 1999 describing incidents of harassment.

By decision dated September 29, 1999, the Office denied appellant's request for reconsideration.

The Board finds that the Office properly refused to reopen appellant's claim for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

To require the Office to reopen a case for merit review under section 8128(a) of Federal Workers' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[2] A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2).[3] If reconsideration is granted, the case is reopened and the case is reviewed on the merits.[4]

In this case, the evidence appellant submitted with her request for reconsideration was either previously submitted, is duplicative of evidence appellant previously submitted and is not relevant to establishing her emotional claim. The January 1996 letter from Ms. Levine is not that of a "physician" as defined under the Act and therefore is not probative on causal relationship.[5] The disability note dated January 13, 1996, the March 12, 1998 award and the temporary limited-duty job offer dated January 13, 1996 were previously submitted in the record. The April 21, 1998 prearbitration settlement is similar to other evidence appellant submitted of grievances and settlements and is not relevant since it does not establish that appellant's supervisors harassed her or acted abusively towards her.[6] Appellant's statement dated September 8, 1999 alleging incidents of harassment by Ms. Robinson and Mr. Coats duplicates prior allegations she has made in the record.

As appellant has not presented evidence that shows that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by the Office or constitutes relevant and pertinent new evidence not previously considered by the Office, appellant has failed to establish her claim.

[2] Section 10.606(b)(2)(i-iii).

[3] Section 10.608(a).

[4] *Id.*

[5] *See Frederick C. Smith*, 48 ECAB 132 (1996).

[6] *See Michael Ewanichak*, 48 ECAB 364, 365-66 (1997); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

The decision of the Office of Workers' Compensation Programs dated September 29, 1999 is hereby affirmed.

Dated, Washington, DC
February 16, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member